

PLM-11
Form

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-196335

DATE: November 14, 1979

MATTER OF: Herbert L. Gray -
Overtime compensation

- DIGEST:
1. Former employee of the Agency for International Development filed ~~claim with GAO on August 14, 1978,~~ for overtime while he was employed in Vietnam from January 1971 to May 1973. Under 31 U.S.C. 71a, claimant has 6 years from accrual of claim to file in our Office and therefore the portion of the claim accruing prior to August 14, 1972, is barred.
 2. Submission of vague and indefinite statements from fellow employees by a former employee of the Agency for International Development to support his claim for 20 hours per week of overtime compensation for work in Vietnam is insufficient as statements provide no basis for us to reasonably determine the amount of compensable overtime, if any, worked by the claimant. See George E. Gilmore, B-188238, May 20, 1977.

AC 2000 97 - Mr. Herbert L. Gray has appealed our Claims Division's denial of his claim for overtime compensation for his service in Vietnam as a civilian employee of the Agency for International Development (AID), Department of State. We concur with the decision of our Claims Division that Mr. Gray has failed to provide sufficient evidence to establish his claim.

Mr. Gray's claim was first received in our Office on August 14, 1978. He claimed compensation for approximately 1,000 hours of involuntary overtime on the basis that from January 1971 to May 1973 he was required to work a minimum of 10 hours per week of uncompensated overtime. He later revised his claim to 20-1/2 hours per week of uncompensated

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overtime. In support of his claim, he has submitted 2 letters from fellow employees in Vietnam who state Mr. Gray worked some overtime and a copy of a form dated September 4, 1972, signed by a Senior Military Advisor indicating that all employees were to attend morning briefings at 7:30 a.m. on Monday through Saturday. He also furnished a letter from another Senior Military Advisor indicating that during November 1970 to June 1972, Mr. Gray and all members of his team worked long hours, but that he, the advisor, had no authority to order him to work overtime.

Our Claims Division correctly pointed out that under 31 U.S.C. 71a (1976) the portion of Mr. Gray's claim which accrued over 6 years prior to its receipt in our Office (i.e., prior to August 14, 1972) was barred; and for the unbarred portion of the claim, the submitted evidence was too vague or was irrelevant as it related to the barred portion of the claim.

Generally, an employee may not be compensated for overtime unless the work has been officially ordered or approved. We have recognized that the requirement may be met where due to the nature of his employment an employee is induced by a superior to perform overtime work to effectively complete his assignment. However, mere "tacit expectation" that overtime is to be performed does not constitute official order or approval. Donald E. Bordenkircher and Chester C. Jew, B-188089, October 31, 1977, discussing Eaylor v. United States, 198 Ct. Cl. 331 (1972). In the present case, we have little evidence that Mr. Gray's alleged overtime was either officially approved or induced by his superiors.

However, we need not decide whether Mr. Gray engaged in approved or induced overtime. We have examined the evidence presented by the claimant and find that it provides no basis upon which a reasonable estimate of his weekly work hours could be determined. The three letters from his fellow employees are much too vague and indefinite. One letter only discusses the period for which his claim is barred and therefore is not probative of his work hours for

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Accordingly, we must sustain the denial of the claim.

Milton J. Asoolan

For the Comptroller General
of the United States